

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
1004 State Office Building
Indianapolis, Indiana**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

DOCKET NO. 01174

**IN THE MATTER OF THE CHARGE OF RACIAL
DISCRIMINATION AGAINST THEODORE E.
MILLER, OWNER & PROPRIETOR OF TED'S
BARBER SHOP, 5198 NORTH FRANKLIN ROAD,
INDIANAPOLIS, INDIANA, Under the Acts of
1961, Chapter 208, As Amended**

FINAL DECISION

The following entry is hereby made on this 16th day of October, 1970, in the matter of *Staff Sgt. William Kinchloe vs. Mr. Theodore E. Miller, Owner & Proprietor of Ted's Barber Shop.*

1. THAT, the above captioned case was heard on the 16th day of July, 1970 at Indianapolis, Indiana by Commission Robert Garton;
2. THAT, notice of the recommendations made by said commissioner have been duly served upon the parties involved, and no objection has been .entered by either party, pursuant to Rule IX (B) of the Rules and Regulations of the Indiana Civil Rights Commission;
3. THAT, a majority of the Commission now finds the recommendations of the Hearing Commission to be substantiated by fact and property made under the Indiana Civil Rights Act;

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
1004 State Office Building
Indianapolis, Indiana**

**WILLIAM KINCHLOE
Complainant,**

DOCKET NO. 01174

vs.

**THEODORE E. MILLER/TED'S BARBER SHOP
Respondent**

REPORT AND RECOMMENDATION OF PRESIDING COMMISSIONER

Nature of the Controversy

This matter was instituted before the Indiana Civil Rights Commission by a complaint filed by Staff Sergeant William Kinchloe, U.S. Army, dated May 13, 1970, alleging, in substance, that the respondents violated Chapter 208 of the Acts of 1961 of the Indiana General Assembly, as amended, by discriminating against him because of color, by denying him the opportunity to obtain a haircut.

Pursuant to notification of all parties, a hearing upon the complaint: was held on July 16, 1970, in Room 802 of the Indiana State Office Building, with the undersigned sitting as Presiding Commissioner. The hearing lasted approximately two hours and involved consideration of one exhibit as thereafter identified and the testimony of eight witnesses.

The complainant was represented by Mr. Theodore M. Sosin, as legal counsel, and the respondent was represented by Mr. William E. Qualkinbush. Miss Patricia Gifford, Assistant Attorney General served as legal counsel to the Presiding Commissioner. A transcript of the hearing was reported by Herman S. Tierney.

In view of the fact that less than a majority of the Commission conducted the hearing, this report and recommendation is made for entry of of an order by the Commission, as required by its rules and regulations.

Notice of such report and recommendation must be served on the parties, and they may file objections to the same within ten (10) days thereafter, all as prescribed in the above rules and regulations.

II **Jurisdiction**

The Indiana Civil Rights Act, as amended, states that it is the public policy of the State of Indiana to provide all of its citizens equal opportunity for access to public conveniences and accommodations. In Section 2, of the Act, it specifically states that "equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property, to the extent that remedies for the prevention of their denial are herein provided, are hereby declared to be civil rights." In Section 3, the term public accommodation is defined to mean any establishment which caters or offers its services or facilities or goods to the general public.

In this case, the complainant is a Negro male and the respondent is a white male barber and is licensed by the State of Indiana to offer barbering services to the general public. The complainant charged that he had gone to the respondent's barber shop in the North Lawrence Shopping Center to obtain a haircut. After waiting his turn, he asked for a comb to comb his hair out. His complaint states further that the respondent indicated that, 'Well we don't cut colored people's hair, old Buddy.' The incident occurred on April 23, 1970, and on May 13, 1970 a statement of claimant was filed with the State Civil Rights Commission, signed by Staff Sergeant William Kinchloe and properly notarized.

In view of the broad public policy of the State of Indiana as expressed in Chapter 208 of the Acts of 1961, it was concluded by the State Civil Rights Commission that it should recognize jurisdiction and decide the issue on its merits.

III **Findings of Fact**

On the basis of the evidence presented, findings of fact are made as follows:

1. Complainant is a Negro male, currently holding rank of Staff Sergeant in the United States Army. He has been in the army for the past thirteen years and, at the time of the hearing, was in transit to a new duty assignment in Vietnam. On April 23, 1970, at approximately 10:30 A. M., he went with Sp. 4 Terry Sheldon to Ted's Barber Shop to obtain a haircut. According to Staff Sergeant Kinchloe's testimony there were three customers waiting for a haircut at the time. He and Sheldon engaged in conversation with the customers and with the respondent. Other customers came in and moved ahead of Kinchloe and Sheldon, but neither complained as they were in no hurry. Both were wearing military dress uniforms.
2. Ted Miller is the proprietor of Ted's Barber Shop, located at 5198 North Franklin Road, Indianapolis, Indiana, Barbers employed include Ted Miller and Mrs. Peggy Lee. A third barber chair is unoccupied. The shop hours are 10:00 A.M. to 7:00 P.M. and the telephone number is 545-7714.
3. After Sheldon received his haircut from Ted Miller, Kinchloe testified that he removed his coat and tie and asked for a comb. He was informed by the respondent that, "We don't cut colored people's hair, old Buddy." Both Sheldon and Kinchloe left the shop without argument.
4. Kinchloe testified that, at the time he visited the shop he wore his hair in a regular haircut style, parted in the middle and combed to the side. He receives a haircut at least once a month and has it cut to comply with army regulations. When he visits a white barber, he normally asks for a comb to prepare his hair because a white barber is not accustomed to cutting Negro hair. He testified that he had never been denied a haircut before.

5. Mrs. Daisy Kinchloe, wife of the complainant, testified that after picking her husband up after work and learning of the alleged discrimination, she telephoned Ted's Barber Shop, requesting the telephone number through the information operator. She asked to speak with the proprietor and talked with a male who identified himself as the proprietor of the shop. She identified herself as an employee of the Better Business Bureau of Indianapolis and asked if there had been an incident at the shop involving a refusal to cut a Negro's hair. She testified that the male voice answered, "Yes, that is right. You can bring anybody in here you want to. I ain't going to cut no Negro's hair."
6. Mrs. Peggy Lee, a registered barber employed at Ted's Barber Shop, testified that after Kinchloe asked for a comb, Miller said to him, "We don't cut colored people's hair here." She did not consider this comment a refusal to cut hair, merely a statement of fact. She had never heard the respondent refuse to cut Negro hair. She had cut Negro hair at The Bunker Hill Air Force Base, without being trained to do so, and found it difficult to cut due to texture. While employed at Bunker Hill Air Force Base for approximately seven months, she averaged between fifteen to twenty haircuts a day, approximately one per cent of her customers being Negro. She could not cut Negro hair successfully with the same clippers that she used with white customers.
7. Ray Roan, a barber and real estate broker, testified that he had practiced as a barber for thirty eight years, had never cut Negro hair and had never tried to cut it. He had employed people who cut Negro hair. He has never noticed any information regarding cutting Negro hair in trade magazines to which he subscribed. He testified further that separate schools existed to train black barbers.
8. Kenneth Fleener, President, Indiana Barber College, stated that only one chapter of nineteen Chapters in the college's standard text book was devoted to the cutting of colored-type hair, but that, in theory, all students at his college were trained to cut Negro hair. Fleener has cut all types of hair and is willing to cut anyone's hair who has the money to pay for a haircut. He testified that Negro hair is different in texture,

the hair shaft being flat whereas a Caucasian hair shaft is round. He testified further that a special clipper was required to cut Negro hair successfully, that this clipper added approximately \$100 to a student's cost of equipment, and he does not require students to purchase it. The college averages only two or three Negro customers a year, and has always accepted black students. Fleener has cut all types of hair and is willing to cut anyone's hair who has the money to pay for a haircut.

9. Nolan Grunden, owner and manager of the National Barber School, testified that he was instructor for the respondent in 1962 and, at that time, there were no Negro students in the school and that his students rarely cut Negro hair in the school's shop, averaging one Negro customer ever six months. He testified that the cutting of Negro hair was stressed more in current training programs for barbers. He stated that the difficulty in cutting Negro hair was its curliness, which requires the use of clippers in a different manner. According to Grunden, it is difficult to judge how much hair to remove, a common mistake being to remove too much or too little.
10. Thorn Jamerson. Project Director for the Equal, Employment Opportunity Commission, testified that he had attended barber school for approximately nine months, had cut hair of both white and black male customers and, according to his training, could use identical instruments for either type of hair by changing the setting. He did not graduate from barber's school, and has not practiced as a barber.
11. Ted Miller testified that he told Staff Sergeant William Kinchloe that, "We don't cut colored people's hair, old Buddy". He made this statement after Kinchloe had asked him for a comb and did not consider it a refusal to cut Kinchloe's hair, merely a refusal to lend him a comb. Miller refused to sign a consent agreement offered by a staff member of the Indiana Civil Rights Commission. (See State's Exhibit #1). Miller testified that he had never had formal training in cutting Negro hair, did not believe that he could cut Negro hair and maintain his professional standards, and that he was concerned over damaging his professional reputation if he tried to do so.

He has been self-employed for approximately five years and has not cut Negro hair in his shop. In cutting Caucasian hair, he cuts against the hair grain, a process which peels a Negro's hair and leaves a poor haircut. He stated that approximately ten months ago, a Negro came to his shop and he explained that he did not know how to cut Negro hair and the man left. In response to a question from the writer, he indicated that, if a Negro insisted, he would cut his hair.

12. Miller stated that he had cut hair for approximately six male Negroes during a six-month period when he was employed at a barber shop at Fort Harrison. He had no direct complaints from any Negro customer, but he was not satisfied with the results of their haircuts because they were not nice haircuts.
13. Miller did not recall any telephone conversation with Kinchloe's wife, but did recall several conversations with representatives of the Better Business Bureau in Indianapolis. There are several barbershops. In the city of Indianapolis operating under the name of Ted's.
14. An exhibit offered by the attorney for the complainant was allowed into evidence to refute testimony given by the respondent regarding the substance of the Conciliation agreement. This exhibit was accepted without prejudice by either party see Exhibit I.

IV

CONCLUSIONS

The respondent argued that he did not deny a haircut to Staff Sergeant Kinchloe, but merely denied a request for use of a comb. In the opinion of the writer, this argument is a specious and subtle attempt to mask an act of racial discrimination. After noting that Miller's barber chair was available, Staff Sergeant Kinchloe removed his coat and tie and asked for a comb, actions which any reasonable man would assume were in preparation for a haircut. It can be inferred that the respondent assumed so, too, or he would have denied him the use of the comb rather than say "We don't cut colored people's hair here" or words to that affect.

It was argued that the respondent was concerned about his lack of training and skill in cutting Negro hair, that he had high professional standards, and that he was concerned about protecting his professional reputation. The writer readily appreciates the importance of customer good will and the concern a professional man has for his business reputation. It is a concern that the respondent expressed under oath and must not be taken lightly.

However, it is contrary to the stated public policy of the State of Indiana to deny access to public accommodations, in this instance a barbershop, to any

**...individual because of his race, color, religion
or national origin, equal access being a declared
civil right.**

The law is clear. Its intent makes a defense based on lack of skill irrelevant. Rather, it has the opposite effect. If a barber is truly concerned about his professional reputation, it behooves him to acquire the skills requisite to performance required by law, in this instance making his services available without regard to race. Miller admitted that he had cut Negro male hair on other occasions and, although he was not satisfied with the results, he had not received direct complaints from the Negro customers involved. His argument that he lacked the skill is not only irrelevant but, to a degree, discredited by his testimony.

Sufficient case law exist to justify the conclusion that lack of skill is irrelevant in cases of this nature. Attorneys for both parties were invited to file briefs within ten (10) days of the hearing and the attorney for the complainant took advantage of the invitation.

Based on the evidence and testimony introduced at the hearing, it is the opinion of the undersigned that it is sufficient to support a finding for the complaint. The Conclusion is that there is a fair preponderance of evidence to finding of discrimination because of color.

RECOMMENDATIONS

In view of the foregoing, it is hereby recommended:

- A. That the Commission adopt the findings of fact set forth in Part III of this report:
- B. That the Commission, state the following conclusions of law:
 - 1. That the respondent had discriminated against the complainant because of color within the meaning of Chapter 8 of the Acts of 1961 of the Indiana General Assembly, as amended.
- C. That the Commission enter an order of compliance in accordance with the following:
 - 1. The respondent shall cease and desist from refusing to cut the hair of any persons because of their race, color religion, national origin, in accordance with the Indiana Civil Rights Act.
 - 2. The respondent shall notify the Base Commander at Fort Benjamin Harrison, in writing, of his policy as stated under item #1 above.
 - 3. The respondent shall keep a record, for the next twelve months, of the number of minority customers who came to his shop, indicate whether or not he served them, and shall report these figures to the Indiana Civil Rights Commission every three months for one year.
 - 4. The respondent shall notify all employees of his shop of his new policies in servicing minority customers and insure that each employee has the necessary skills requisite meeting the requirements of his policy.
 - 5. The Indiana Civil Rights Commission will continue jurisdiction of this case for the-next three years.
 - 6. The respondent shall post copies of this order, as well as Instructions to employees on compliance in a conspicuous place in his barber shop for one year.

7. A copy of this report and recommendations shall be forwarded to the Board of Barber Examiners.

Notice of the filing hereof is being given to the parties this proceeding, as required by the rules and regulations of the Commission, by delivering or mailing a copy of such notice to the respective counsel, together with a copy of this report and recommendation.

Date: October 1970